

JUDGE FURMAN

19CV9158

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HENRY F. HEWES

Plaintiff,

v.

ALABAMA SECRETARY OF STATE, ARIZONA
CORPORATION COMMISSION, ARKANSAS
SECRETARY OF STATE, CALIFORNIA SECRETARY
OF STATE, COLORADO SECRETARY OF STATE,
CONNECTICUT SECRETARY OF STATE,
DELAWARE SECRETARY OF STATE, DISTRICT OF
COLUMBIA CONSUMER & REGULATORY
AFFAIRS, FLORIDA SECRETARY OF STATE,
GEORGIA SECRETARY OF STATE, IDAHO
SECRETARY OF STATE, ILLINOIS SECRETARY OF
STATE, INDIANA SECRETARY OF STATE, IOWA
SECRETARY OF STATE, LOUISIANA SECRETARY
OF STATE, MAINE STATE DEPARTMENT,
MARYLAND SECRETARY OF STATE,
MASSACHUSETTS SECRETARY OF STATE,
MICHIGAN SECRETARY OF STATE, MINNESOTA
SECRETARY OF STATE, MISSISSIPPI SECRETARY
OF STATE, MISSOURI CORPORATIONS DIVISION,
MONTANA SECRETARY OF STATE, NEBRASKA
SECRETARY OF STATE, NEW JERSEY DIVISION OF
REVENUE, NEW MEXICO CORPORATIONS
DIVISION, NEW YORK DEPARTMENT OF STATE,
NORTH CAROLINA SECRETARY OF STATE, OHIO
SECRETARY OF STATE, OKLAHOMA SECRETARY
OF STATE, OREGON SECRETARY OF STATE,
PENNSYLVANIA SECRETARY OF STATE, RHODE
ISLAND SECRETARY OF STATE, SOUTH
CAROLINA SECRETARY OF STATE, SOUTH
DAKOTA SECRETARY OF STATE, TENNESSEE
SECRETARY OF STATE, TEXAS SECRETARY OF
STATE, UTAH DEPARTMENT OF COMMERCE,
VERMONT SECRETARY OF STATE, VIRGINIA
SECRETARY OF STATE, WASHINGTON
SECRETARY OF STATE, WEST VIRGINIA
SECRETARY OF STATE, WISCONSIN SECRETARY
OF STATE, and WYOMING SECRETARY OF STATE

Defendants.
-----X

Case

No.: _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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19CV00158-LJL

INTRODUCTION

Plaintiff is challenging defendants because they place undue burdens on ballot access for candidates for public office. Plaintiff's rights are protected by the First and Fourteenth Amendments of the United States of Constitution. The relief sought in this case is an Order for Declaratory and Injunctive Relief compelling Defendants to place the name of all candidates for the nomination for President on the Democratic Primary Ballot if they are registered with the Federal Election Commission and request to be included on the ballot in a timely manner.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3) and (4).
2. This suit is authorized by 42 U.S.C. §1983.
3. Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, and Rule 65 of the Federal Rules of Procedure.
4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(b).

PARTIES

5. Plaintiff Henry F. Hewes is a natural born citizen of the United States, is 70 years old, resides and is a voter in the State of New York and a registered member of the Democratic Party who registered his candidacy for the Democratic Nomination for President of the United States in 2016 with the Federal Election Commission.

6. Secretary of State and is being sued herein in his/her official capacity. He/She is the chief election officer of their state and the person who must determine whether to place Plaintiff Henry Hewes' name on the ballot, and how to do so. He also has the responsibility to adhere to and enforce the Statues challenged in this complaint governing access by a Democratic

candidate for President. He also has supervisory authority over all election officials, is required to receive returns, canvas and certify results, certify nominations of Democratic candidates, maintain election records, and assist local election officials.

THE CHALLENGED LAWS AND THE FACTS

7. The election laws in the states in question have as its stated public purpose promoting free and fair participation in the electoral process.

8. The intent of the laws in question that allow the Secretary of State to place candidates on the ballot is to allow candidates to bypass a highly burdensome petition process that is held out as an alternative path to ballot access in these states.

9. The Supreme Court has found that the right to ballot access is associated with the right to vote, and as such, it is a fundamental constitutional right that is subject to the strict scrutiny standard. Decisions to restrict ballot access require a demonstration by the government that a valid governmental interest can only be achieved by the limitation of the constitutional right in question.

10. There would be no meaningful burden imposed on the states in question by a requirement to include names of all registered candidates on their presidential ballots. This is true both in terms of financial and administrative burden.

11. This strict scrutiny standard would require demonstration of an important government interest that can be advanced only by restriction of a protected Constitutional right. It is clearly the obligation of the government to demonstrate that the legitimate interest exists and can only be achieved by an intrusion on a constitutionally protected right.

12. The current system of ballot qualification in the 50 states is complex and varies from state to state. It is generally accepted and is not disputed by any rational party that it is virtually impossible for a candidate to appear on all these ballots unless he or she is favored by the national party and the media.

13. The legitimate interests of government is to allow the widest possible range of choice in elections and to cut restrictions on ballot access to an absolute minimum. This interest is no way promoted or advanced by limiting the Constitutional right to vote or to appear on the ballot.

14. The Federal Election Committee (FEC) has a list of people who have registered as candidates for President. Even if all these candidates wanted to appear on Presidential Ballots and could satisfy some reasonable bureaucratic burden to comply with non-restrictive ballot access systems, the burden for states in putting all qualified candidates requesting ballot access on the Presidential Ballot, this would not be a substantial or unreasonable burden on the states.

15. In fact, California offers virtually open access on Presidential Primary Ballots without any problems. This demonstrates that open access to a general election ballots is possible.

16. All primary elections are run by state governments and are subject to constitutional restrictions that limit government actions. The circumstance where state law seeks to delegate ballot access to political parties is clearly unacceptable.

17. The current standards used by the states require Secretaries of State to use clearly improper standards for deciding who may appear on the ballot. These standards include:

- (a) Amount of campaign contributions raised by the candidate.
- (b) Whether the candidate has been approved by the national party, and debate sponsors to appear in televised debates.
- (c) Whether the Secretary of State believes the candidate is publicly known.
- (d) Is the candidate willing to pay a ballot access fee unrelated to actual state costs of ballot inclusion?
- (e) Whether the name of the candidate is approved by the State Party.

18. All of these standards are counterproductive in the context of the strict scrutiny standard they cater to the political attitudes of election officials, and are designed to limit rather than expand ballot access.

19. The best evidence of the burdensome nature of the current system is that the number of candidates obtaining ballot access in the Democratic Presidential Ballot in all 50 states in 2016 can be counted on one hand (*see Exhibit A*). No candidate using the petition process to gain ballot access in all 50 states was successful.

20. Plaintiff Henry Hewes has filed with the FEC as a candidate for United States President in 2020 and is recognized by the FEC as a candidate. As such, he is subject to all federal government rules and restrictions imposed by the FEC. As such, he was officially recognized as a candidate by the federal government. He intends to be a candidate in 2020,

- (a) The failure of the Court to grant the requested Order would result in irreparable harm to Plaintiff, and infringe on his fundamental constitutional right to ballot access.
- (b) The probability of success based on the merits of the case is clearly in Plaintiff's favor.
- (c) The requested order would not impose any meaningful burden on Defendants or the states they represent, and would in fact, be consistent with the stated intent of the election laws in the states in question

RELIEF REQUESTED

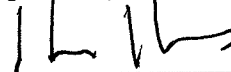
WHEREFORE, Plaintiff respectfully pray that this Court:

- (1) Accepts jurisdiction over this case;
- (2) The probability of success based on the merits of this case is clearly in Plaintiff's favor.

- (3) An Order for Declaratory and Injunctive Relief compelling Defendants to place Henry F. Hewes and the name of all candidates for the nomination for President on the Democratic Primary Ballot if they are registered with the Federal Election Commission and request to be included on the ballot in a timely manner;
- (4) The requested Order would not impose any meaningful administrative or financial burden on the Defendants or the states that they represent and should in fact be consistent with stated intent of the election laws of the states in question.
- (5) The failure of the Court to grant the requested Order would result in irreparable harm to Plaintiff. In that, he would lose his opportunity to participate in the election and in fact, would infringe on his fundamental constitutional right to ballot access.
- (6). The Democratic Primaries begin in February 2020 and ballot preparation begins in November 2019. There is clearly not enough time for this case to be argued in the Court and to be finally adjudicated. Only judicial intervention at this point can adequately protect the constitutional rights of the Plaintiff and other potential candidates.

Dated: New York, New York
October 3, 2019

Respectfully,



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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HENRY F. HEWES,

Plaintiff,

Case No.: _____

-against-

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CORPORATION COMMISSION, ARKANSAS SECRETARY
OF STATE, CALIFORNIA SECRETARY OF STATE,
COLORADO SECRETARY OF STATE, CONNECTICUT
SECRETARY OF STATE, DELAWARE SECRETARY OF
STATE, DISTRICT OF COLUMBIA CONSUMER &
REGULATORY AFFAIRS, FLORIDA SECRETARY OF
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JERSEY DIVISION OF REVENUE, NEW MEXICO
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STATE, TEXAS SECRETARY OF STATE, UTAH
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OF STATE, VIRGINIA SECRETARY OF STATE,
WASHINGTON SECRETARY OF STATE, WEST VIRGINIA
SECRETARY OF STATE, WISCONSIN SECRETARY OF
STATE, and WYOMING SECRETARY OF STATE

Defendants.
-----X

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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DATED: October 3, 2019